UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	**CRIMINAL NO. H-16-279**
	§	
PATRICK GAILEY,	§	
Defendant	§	

PLEA AGREEMENT

The United States of America, by and through Abe Martinez, Acting United States Attorney for the Southern District of Texas, and Quincy Ollison, Assistant United States Attorney, and the defendant, Patrick Gailey ("Defendant"), and Defendant's counsel, pursuant to Rule 11(c)(1)(A) and (c)(1)(B) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

Defendant's Agreement

1. Defendant agrees to plead guilty to Count One (1) of the Superseding Criminal Information. Count One (1) charges Defendant with Contempt of Court, in violation of Title 18, United States Code, Section 402. Defendant, by entering this plea, agrees that he is waiving any right to have the facts that the law makes

essential to the punishment either charged in the indictment, or proved to a jury or proven beyond a reasonable doubt.

Punishment Range

2. The statutory maximum penalty for a violation of Title 18, United States Code, Section 402, a Class B Misdemeanor, is imprisonment of not more than Six (6) months and a fine of not more than $1,000.00. Additionally, Defendant may receive a term of supervised release of One (1) years and acknowledges and understands that if he should violate the conditions of any period of supervised release which may be imposed as part of his sentence, then Defendant may be imprisoned for the entire term of supervised release, without credit for time already served on the term of supervised release prior to such violation. See Title 18, United Stated Code, Sections 3559(a) (7) and 3583(e) (3). Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

Mandatory Special Assessment

3. Pursuant to Title 18, United States Code, Section 3013(a)(1)(A) immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of Ten ($10) per count of conviction. The payment will be by cashier's check or money order, payable to the

Clerk of the United States District Court, District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Immigration Consequences

4. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Defendant understands that if he is not a citizen of the United States, by pleading guilty he may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty.

Waiver of Appeal and Collateral Review

5. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, Section 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or "collaterally attack" the conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28,

United States Code, Section 2255. In the event Defendant files a notice of appeal following the imposition of the sentence or later collaterally attacks his conviction or sentence, the United States will assert its rights under this agreement and seek specific performance of these waivers.

6. In agreeing to these waivers, Defendant is aware that a sentence has not yet been determined by the Court. Defendant is also aware that any estimate of the possible sentencing range under the Sentencing Guidelines that he may have received from his counsel, the United States, or the Probation Office, is a prediction and not a promise, did not induce his guilty plea, and is not binding on the United States, the Probation Office or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive. Defendant further understands and agrees that the United States Sentencing Guidelines are "effectively advisory" to the Court. See United States v. Booker, 543 U.S. 220 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated guideline range. Defendant further understands and agrees that because Count One of the Superseding Criminal Information is a Class B misdemeanor, the United States Sentencing Guidelines do not apply to Class B misdemeanors, U.S.S.G. § 1B1.9.

7. Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement.

The United States' Agreements

8. The United States agrees to each of the following:

(a) If Defendant pleads guilty to Count One (1) of the Superseding Criminal Information and persists in that plea through sentencing, and if the Court accepts this plea agreement, the United States will move to dismiss the Indictment in Criminal No. H-16-279, at the time of sentencing.

(b) The United States agrees to allow Defendant Patrick Gailey to plead to one count of Contempt of Court in violation of 18 U.S.C. § 402, a misdemeanor offense, in exchange for Co-Defendant Angelina Gailey's plea of guilty to Count Two (2) of the indictment in Criminal No. H-16-279.

(c) At the time of sentencing, the United States agrees not to oppose Defendant's anticipated request to the Court and the United States Probation Office that he receive credit towards his sentence for acceptance of responsibility by his timely plea of guilty.

(d) The United States does not oppose the defendant's request that the Court consider sentencing him to a term of probation.

Agreement Binding - Southern District of Texas Only

9. The United States agrees that it will not further criminally prosecute Defendant in the Southern District of Texas for offenses arising from conduct charged in the Indictment. This plea agreement binds only the United States Attorney's Office for the Southern District of Texas and Defendant. It does not bind any other United States Attorney. The United States will bring this plea

agreement and the full extent of Defendant's cooperation to the attention of other prosecuting offices, if requested.

United States' Non-Waiver of Appeal

10. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

(a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;

(b) to set forth or dispute sentencing factors or facts material to sentencing;

(c) to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;

(d) to file a pleading relating to these issues, in accordance with Section 6A1.2 of the United States Sentencing Guidelines and Title 18, United States Code, Section 3553(a); and

(e) to appeal the sentence imposed or the manner in which it was determined.

Sentence Determination

11. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the provisions of Title 18, United States Code, Section 3553(a). Defendant, nonetheless, acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which Defendant pleads guilty, and that the sentence to be

imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees that the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

Rights at Trial

12. Defendant understands that by entering into this agreement, he surrenders certain rights as provided in this plea agreement. Defendant understands that the rights of a defendant include the following:

(a) If Defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.

(b) At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses and his attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for Defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court; and

(c) At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if Defendant desired to do so, he could testify on his own behalf.

Factual Basis for Guilty Plea

13. Defendant is pleading guilty because he is in fact guilty of the charges contained in Count One (1) of the Superseding Criminal Information. If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The following facts, among others would be offered to establish Defendant's guilt:

1). The process for filing a bankruptcy petition is conducted in Bankruptcy Court and is governed by the United States Bankruptcy Code, which is found in Title 11 of the United States Code.

2). An individual may file a petition for one of several types of bankruptcy, commonly referred to as chapters 7, 11, and 13. A debtor is required to complete and file several documents with the Bankruptcy Court to carry out the bankruptcy process. These documents consist of a Petition, which contains summary information about the debtor's financial condition, various bankruptcy schedules, and a Statement of Financial Affairs, which contain, among other things, detailed information about the debtor's assets, liabilities, recent payments to creditors, past and current income, and anticipated future income. The Petition, Statement of Financial Affairs and

Bankruptcy Schedules are required to be signed by the debtor and certified under penalty of perjury that the information contained in them is true and correct. In a Chapter 13 bankruptcy case, a debtor is also required to file a plan to pay back creditors and begin making payments to the Chapter 13 Trustee shortly after filing. In Chapter 13 bankruptcy cases, a Chapter 13 Trustee is appointed in many cases to administer the debtor's plan and make payments to creditors.

3). On June 1, 2012, defendant filed a Chapter 13 bankruptcy petition, in the Houston Division of the Southern District of Texas, case number 12-34041. He did not file the required Schedules listing his creditors, amount of debt owed, assets, and a Statement of Financial Affairs in accordance with the Rules of the Bankruptcy Code and a Bankruptcy Judge's Order. Defendant also did not file a Chapter 13 Plan to provide for payment of his debt.

4). Defendant willfully disobeyed the Rules and Order of the Bankruptcy Court. His sole purpose in filing these petitions was to obtain an automatic stay of foreclosure by creditors of property, specifically a house located at 2011 Commonwealth Street, Houston, Texas.

Breach of Plea Agreement

14. If Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and Defendant's plea and sentence will stand. If at any time Defendant retains, conceals, or disposes of assets in violation of this plea agreement, or if Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, will be used against defendant in any prosecution.

Restitution and Forfeiture

15. Defendant agrees to pay full restitution to the victim(s) regardless of the count(s) of conviction. Defendant understands and agrees that the Court will determine the amount of restitution to fully compensate the victim(s). Defendant agrees that restitution imposed by the Court will be due and payable immediately and that Defendant will not attempt to avoid or delay payment. Subject to the provisions of paragraph 7 above, Defendant waives the right to challenge in any manner, including by direct appeal or in a collateral proceeding, the restitution order imposed by the Court.

Fines

15. Defendant understands that under the Sentencing Guidelines the Court is permitted to order Defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment or term of supervised release, if any. Defendant agrees that any fine imposed by the Court will be due and payable immediately, and Defendant will not attempt to avoid or delay payment. Subject to the provisions contained in the plea agreement, Defendant waives the right to challenge the fine in any manner, including by direct appeal or in a collateral proceeding.

Complete Agreement

16. This written plea agreement, consisting of 14 pages, including the attached addendum of Defendant and his attorney, constitutes the complete plea agreement between the United States, Defendant, and Defendant's counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against him and that he is pleading guilty freely and voluntarily because he is guilty.

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PLEA AGREEMENT - ADDENDUM

I have fully explained to Defendant his rights with respect to the pending Superseding Criminal Information. I also have carefully reviewed every part of this Plea Agreement with Defendant. To my knowledge, Defendant's decision to enter into this agreement is an informed and voluntary one.

Gerald Fry
Attorney for Defendant

5/18/17
Date

I have consulted with my attorney and fully understand all my rights with respect to the Superseding Criminal Information pending against me. My attorney has fully explained, and I understand all my rights. I have read and carefully reviewed every part of this Plea Agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.

Patrick Gailey
Defendant

5/18/17
Date

17. Any modification of this plea agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on May 18, 2017.

Defendant

Subscribed and sworn to before me on May 18, 2017.

DAVID BRADLEY
UNTED STATES DISTRICT CLERK

By: ______________________
Deputy United States District Clerk

APPROVED:

KENNETH MAGIDSON
UNITED STATES ATTORNEY

By: ______________________
Quincy L. Ollison
Assistant United States Attorney
Southern District of Texas
Telephone: 713-567-9717
Facsimile: 713-718-3304

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Gerald Fry
Attorney for Defendant